

REMARKS

Claim 64 is pending. In response to the Office Action mailed April 9, 2007, Applicants respectfully request favorable reconsideration of the subject application in view of the following remarks.

Amendments to the Specification

Throughout the specification, the words “flavonoids” and “isoflavonoids” have been inadvertently misspelled as “flavenoids” and “isoflavenoids,” respectively. By the present amendment, Applicants hereby correct these misspelled words throughout the specification. No new matter is being added.

Claim Rejections – 35 U.S.C. § 112, first paragraph (written description, new matter)

Claim 64 stands rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which is not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the Applicants, at the time the application was filed, had possession of the claimed invention. In particular, the Action asserts that the amendment filed by Applicants on December 1, 2004 to excise from claim 64 quercetin in combination with ascorbic acid constitutes new matter. Specifically, the Action asserts that the specification does not provide any guidance for indicating that the composition must contain moieties in the recited groups minus the specific combination of quercetin and ascorbic acid.

Applicants respectfully traverse the rejection and submit that the specification as filed clearly satisfies the requirements of 35 U.S.C. §112, first paragraph.

Applicants submit, for reasons given herein and also for those previously made of record in the Response and Amendment Under 37 C.F.R. 1.111 filed on December 1, 2004, that it is well settled that an applicant may decide what bounds of protection are to be encompassed within a claim, even where less than the full scope of the disclosure is being claimed, and even where the invention of another is merely being excised by amendment. *In re Johnson*, 558 F.2d 1008, 1019; 194 U.S.P.Q. 187 (C.C.P.A. 1977). Under such circumstances, and particularly where the scope of the claims would appear to be narrowed by the previous amendment, no

"artificial subgenus" is created and no new matter is being added. *Id.*, at 1018-1019. Reconsideration of the rejection is therefore respectfully requested in view of the Response submitted on December 1, 2004, and further in view of the present Remarks.

Additionally, the present specification discloses, for example, at page 2, line 29 through page 3, line 12 and page 3, lines 18-22, that quercetin and ascorbic acid are compounds, *inter alia*, that *may* be selected for use according to certain embodiments. As such, disclosure in the specification of other compounds that also *may* be used in certain embodiments conveys to the skilled person that embodiments are certainly contemplated in which the combination of quercetin and ascorbic acid is not necessarily the selected combination. Also, for example, at page 10, lines 20-25, the specification provides in pertinent part that certain flavones and, additionally or alternatively, ascorbic acid or its derivatives, may be used, thereby conveying to the skilled person that there is no requirement to use any particular combination, *i.e.*, that certain combinations may in fact not be used. Similarly, at page 20, lines 9-11, the specification teaches that when certain compounds, from among the various disclosed compounds, are selected for use as a combination in a given composition, other disclosed therapeutic agents may, but need not, be present within the such a composition. Applicants submit that from such teachings in the specification, the skilled person would understand that according to certain contemplated embodiments, any given combination of disclosed compounds might not necessarily have to be selected.

The specification thus teaches at page 19, lines 10-14:

Within certain preferred embodiments, ascorbic acid or a derivative thereof is used ***in combination with a polyphenolic compound as described above***. Certain representative combinations include ***ascorbic acid and one or more flavonoids and/or isoflavonoids*** (such as genistein and ascorbic acid; and kaempferol and ascorbic acid) (emphasis added).

At page 4, lines 4-9, the specification also describes combination of ascorbic acid and any one or more of the flavones or isoflavones as disclosed in the context of various methods:

Within certain embodiments, the compound is genistein, ***quercetin***, apigenin, kaempferol, biochanin A, flavanone, flavone, dihydroxyflavone, trimethoxy-apigenin, apigenin 7-O-neohesperidoside,

fisetin, rutin, daidzein or prunetin. Within other embodiments, the compound is resveratrol, ascorbic acid, ascorbate salts and dehydroascorbic acid. ***Such compounds may be administered alone or in combination*** (emphasis added).

It is therefore respectfully submitted that in view of the present specification as a whole, the skilled artisan would readily appreciate that the application as filed clearly contemplates compositions comprising the recited combination of a polyphenolic compound; a compound selected from resveratrol, ascorbic acid, ascorbate salts and dehydroascorbic acid; and a physiologically acceptable carrier, provided as any of a number of possible combinations of the compounds that are disclosed, including combinations that need not consist essentially of quercetin in combination with ascorbic acid. Applicants therefore submit that claim 64 does not contain new matter, such that reconsideration of the claims and withdrawal of the rejection are respectfully requested.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

Applicants respectfully submit that all of the claims remaining in the application are now believed to be in condition for allowance. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,
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